

*a***GANESAN NACHIAPPAN & ORS****v.****PP***b*

COURT OF APPEAL, KUALA LUMPUR
LAMIN MOHD YUNUS PCA
NH CHAN JCA
HAIDAR MOHD NOOR JCA
[CRIMINAL APPEAL NOS: J-05-39-97 & J-05-40-97]
26 APRIL 2000

c

CRIMINAL PROCEDURE: *Sentence - Appeal against sentence - 14 years' imprisonment for culpable homicide not amounting to murder - Whether trial judge applied correct principles of sentencing - Seriousness of offence - Balance between interests of public and of offender - Whether sentences manifestly excessive or inadequate - Whether any grounds for appellate interference - Penal Code, s. 304 (1st limb)*

*d**e*

The appellants pleaded guilty to a reduced charge of culpable homicide not amounting to murder under the 1st limb of s. 304 of the Penal Code and were convicted and sentenced to 14 years' imprisonment each. Against the sentences imposed, the appellants appealed and the Public Prosecutor cross-appealed.

Held:*f***Per Haidar Mohd Noor JCA***g*

[1] Sentencing is at the discretion of the trial court. Until it is shown that the trial judge has not applied the correct principles of sentencing or has embarked on some unauthorised or extraneous exercise of discretion, an appellate court will not interfere.

h

[2] The trial judge had given due consideration to the appellants' plea of guilty, their ages and the period of their remand. The 45 stab wounds inflicted by the appellants on the deceased were serious. The trial judge had rightly considered this and had balanced the interests of the public with that of the appellants. The trial judge had properly exercised his discretion and the sentences imposed were neither manifestly excessive nor inadequate. There were therefore no grounds to warrant any appellate interference with the sentences imposed.

i

[Appeal and cross-appeal dismissed.]

[Bahasa Malaysia Translation Of Headnotes]

Perayu-perayu telah mengaku bersalah atas tuduhan terkurang homisid salah tidak bermaksud bunuh di bawah rangkap pertama s. 304 Kanun Keseksaan dan disabitkan bersalah dan dihukum penjara selama 14 tahun setiap seorang. Ini adalah rayuan mereka terhadap hukuman tersebut dan pendakwaraya telah membuat rayuan balas.

Diputuskan:**Oleh Haidar Mohd Noor HMR**

[1] Hukuman adalah tertakluk kepada budi bicara mahkamah perbicaraan. Sehingga dapat dibuktikan bahawa hakim perbicaraan tidak menggunakan prinsip-prinsip hukuman yang betul atau telah memulakan suatu latihan budi bicara yang tidak dibenarkan atau tidak berkaitan, suatu mahkamah rayuan tidak akan campur tangan.

[2] Hakim mahkamah telah memberi pertimbangan yang sewajarnya kepada pengakuan bersalah perayu-perayu, umur mereka dan jangkamasa mereka ditahan. Kecederaan hasil tikaman 45 kali yang dibuat oleh perayu-perayu ke atas si mati adalah serius. Hakim perbicaraan dengan betulnya telah mempertimbangkan hal ini dan telah mengimbangkan kepentingan awam dengan kepentingan perayu-perayu. Hakim perbicaraan telah menggunakan budibicaranya dengan betul dan hukuman-hukuman yang dikenakan tidak keterlaluan atau berkurangan. Maka, tidak terdapat alasan untuk membenarkan campur tangan berupa rayuan berkenaan dengan hukuman-hukuman yang dikenakan.

*[Rayuan ditolak.]***Case(s) referred to:***Bhandulananda Jayatilake v. PP [1982] 1 MLJ 83 (refd)**PP v. Loo Choon Fatt [1976] 2 MLJ 256 (refd)***Legislation referred to:**

Penal Code, ss. 34, 302

*Criminal Appeal No: J-05-39-97**For the appellant - Karpal Singh; M/s Karpal Singh & Co**For the respondent - K Muniandy DPP**Criminal Appeal No: J-05-40-97**For the appellant - K Muniandy DPP**For the respondent - Karpal Singh; M/s Karpal Singh & Co**[Appeal from High Court, Johor Bahru; Criminal Trial No: 45-13-1996]**Reported by Gan Peng Chiang*

*a***JUDGMENT****Haidar Mohd Noor JCA:***b*

All the six appellants were originally charged for an offence under s. 302 of the Penal Code read with s. 34 of the Penal Code. Midway through the prosecution case, the learned deputy public prosecutor amended the charge to one under s. 304 (1st limb) read with s. 34 of the Penal Code. All the appellants pleaded guilty to the amended charge (exh. P51) after they understood the nature and consequences of their pleas. The facts of the case were presented by the learned deputy public prosecutor (exh. P52). All of them admitted to the correctness of the facts.

c

After hearing the mitigation put forward by their respective counsel the learned judge sentenced each of them to fourteen years' imprisonment to take effect from the date of their respective arrest.

d

The appeal is in respect of their sentence only. There is a cross-appeal by the Public Prosecutor against their sentence.

As the appeal is against sentence and the facts are fully stated in exh. P52 (pp. 358 to 361 of the appeal record) we do not propose to set them out here.

e

The power of sentencing given to a trial court is a discretionary one and in order for us, as the appellate court, to disturb the sentence imposed, we must be convinced that the trial judge had erred in applying the correct principles of sentencing or had embarked on some unauthorised or extraneous exercise of discretion (see *PP v. Loo Choon Fatt* [1976] 2 MLJ 256 and *Bhandulananda Jayatilake v. PP* [1982] 1 MLJ 83).

f

The learned judge in his judgment had given due consideration, *inter alia*, to the plea of guilty, the ages of the appellants and the period they were remanded before passing the sentence on them (p. 263 of the appeal record). As regards the ages of the appellants and their lack of maturity in committing the offence, this is what the learned judge said at p. 205 of the appeal record:

*g**h*

Peguam-peguam yang mewakili mereka masing-masing telah membuat rayuan meringankan hukuman dan di antara faktor yang diutamakan bagi tujuan ini adalah mereka masih muda pada hari kejadian itu dan tidak berfikir secara matang atas perbuatan mereka. Mengenai faktor ini, saya berpendapat tindakan mereka menetak simati tidak menunjukkan mereka kurang matang pada hari kejadian itu. Mereka telah pergi ke rumah simati dengan membawa senjata dan telah bersedia untuk menggunakan kekerasan ke atasnya.

i

Kesan-kesan luka tetakan pada badan simati, yang mana menurut laporan bedah siasat berjumlah 45, menggambarkan mereka mempunyai sikap penjenayah yang bersedia mengganas dan tidak berperikemanusiaan. Di samping itu saya mendapat, memandangkan kesalahan ini telah dilakukan bersama-sama, ini menunjukkan mereka telah membuat rancangan sebelum melakukannya.

a

The injuries inflicted on the deceased were serious. There were altogether 45 stab wounds. The gory photographs at pp. 285 to 288 of the appeal record clearly showed the seriousness of the injuries. The deceased was badly disfigured. The learned judge was therefore right to take into account the public interest element in view of the seriousness of the offence committed by the appellants.

*b**c*

In our view, the learned judge had properly exercised his discretion in imposing the sentence and there were no grounds for us to interfere with it. The sentence was not manifestly excessive given the facts of the case and the serious injuries. The appeal was therefore dismissed and we affirmed the sentence.

d

As regards the cross-appeal by the Public Prosecutor, we were of the opinion that the sentence imposed is not manifestly inadequate for the reason that the learned judge had properly exercised his discretion and he had taken into account the interests of the appellants and balanced them with the public interest. In the circumstances we should not disturb the sentence imposed. The cross-appeal was accordingly dismissed.

*e**f**g**h**i*